

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

THOMAS GIACCHI,

Plaintiff,

v.

UNITED STATES OF AMERICA
DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE,

Defendant.

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CIVIL ACTION NO. 18-3223

ORDER

AND NOW, this 31st day of January, 2019, after considering the motion to dismiss for lack of subject-matter jurisdiction filed by the defendant (Doc. No. 4), the response in opposition filed by the plaintiff (Doc. No. 10), the reply to the response in opposition filed by the defendant (Doc. No. 12), the complaint (Doc. No. 1), and the arguments presented to the court during the telephonic oral argument held on August 22, 2018; and for the reasons set forth in the separately filed memorandum opinion, it is hereby **ORDERED** as follows:

1. The motion to dismiss (Doc. No. 4) is **GRANTED**;
2. The complaint is **DISMISSED WITHOUT PREJUDICE** for want of subject-matter jurisdiction;
3. The plaintiff shall have fourteen (14) days from the date of this order to file an amended complaint in the unlikely event that he can demonstrate both that he (a) filed a refund claim with the IRS on December 27, 2013 and (b) paid the assessment for tax year 2000, not including penalties and interest, on or after December 27, 2011; and

4. If the plaintiff does not timely file an amended complaint in accordance with paragraph 3 of this order, the court will close this action without any further notice to the parties.

BY THE COURT:

/s/ Edward G. Smith
EDWARD G. SMITH, J.